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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the International Federation for Human Rights (FIDH), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 January 2002]

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*/ This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Libya

The International Federation for Human Rights (FIDH) and its member organization the Libyan League for Human Rights are very concerned about the situation of human rights in Libya.

Libya has been ruled, over the last 31 years by the unelected Government of Colonel Qaddhafi, which abolished the Constitution in 1969 and instituted severe constraints on the enjoyment of basic human rights. Libya has no Constitution, Parliament or any elected body. There is no separation of powers or judicial guarantees.

In theory, Libya is ruled by citizens through a series of unelected "Popular Congresses"; in practice, however, Colonel Qaddhafi and his inner circle (extended family) control all powers. Even Government officials are not allowed to express an opinion on political issues publicly or give press interviews, even about issues relevant to their own spheres of responsibility, without prior permission from the "inner circle" of President Qaddhafi.

This repressive system is based on the exclusion of any judicial supervision, and has led to score of human rights violations. Following their arbitrary arrest, detainees are invariably held incommunicado and told nothing about their arrest. Detainees have no access to a lawyer or any judicial authority supervision that could act as a safeguard to their rights. They are, in many cases, tortured and ill treated from the moment they are arrested.

The Libyan summary "revolutionary justice system" relies on confession, no matter how that confession was obtained (on the grounds of torture, coercion or deception). "Security" apparatus act on their own discretion and are largely unaccountable for their action. This system generates and perpetuates ill treatment and torture and offers no opportunity for redress.

Detainees are often held without charge or trial, some for more than twenty years. Some of them were charged, tried and acquitted by courts, but instead of being released they continue to be held, mostly in the Abu Sleem prison in Tripoli. Others were simply never brought to trial or formally charged. Several detainees have died in custody in the last few years as a result of torture and ill treatment and harsh prison conditions, including lack of medical care, poor hygiene and overcrowded cells. In its last Concluding Observations on Libya (A/54/44, paras.176-189, 11 May 1999), the Committee Against Torture of the United Nations expressed its concern, inter alia, on the fact that "prolonged incommunicado detention, in spite of legal provisions regulating it, still seems to create conditions that may lead to violation of the Convention against torture" and on the fact that "allegations of torture continue to be received by the Committee".

Until 1996 and in application of the "physical elimination of the people enemies", a score of Libyans have been killed both inside and outside the country for which the Government not only claimed responsibility but also rewarded the perpetrators who belong to the "Revolutionary Committees" movement. The impunity of the members of the "Revolutionary Committees" is still the rule in Libya today for whatever crime they may commit. They are the pillars of the repressive system of the Government of Libya.

There are many cases of enforced disappearances of persons suspected of holding diverging views from President Qaddhafi. One of them is Mr. Mansour KIKHIA, who disappeared in Egypt on 10 December 1993. Mr. Kikhia was a member of the Board of the Arab Organization for Human Rights, based in Cairo. He had just attended a meeting of that organization when he disappeared. Mr. Kikhia held several high posts in the Libya between 1969 and 1980, including the post of Minister of foreign Affairs and that of Libya's permanent representative to the United Nations.

There is absolutely no scope for freedom of opinion, thought, assembly and association. The Government has subjected opponents within the country and abroad, as well as their families and

relatives, to harassment, pressure, threats and physical liquidation, in addition to the widespread resort to the demolition of houses as a form of reprisal.

The Government controls all channels of expression, including radio, television and the press, and imposes strict censorship on all newspapers, magazines and books imported into Libya. Independent (non-Governmental) public gathering such as cultural seminars and public lectures are totally banned. The Protection of the Revolution laws of 1971 and 1972 impose stringent restrictions on freedom of expression and other basic human rights. These laws define a number of crimes against the "revolution" which in practice prohibit any expression of diverging opinion. In Libya the judiciary system is totally subjected to the Ruler. It totally prohibits, de facto and de jure, the establishment and the activities of independent Associations be it political parties, NGOs or Trade Unions. A few examples illustrate those prohibitions:

- The Protection of the Revolution Act of 11 December 1969 which makes provision for the execution of anyone who bears arms against the republican regime or participates in any manifestation of opposition to the aims of the Revolution.

- Act No. 45 of April 1972, under the terms of which any exercise of the Right to freedom of assembly or expression, such as strikes or sit-ins, constitutes a criminal offence and may be punishable by death penalty.

- The Prohibition of Party Politics Act No. 71 of May 1972 designates any independent political activities or party politics as high treason against the country, which carries the death penalty.

- Act No. 5 1988 under which the People's Court was established, undermines the authority and independence of the judiciary and vests the Office of the People's Prosecutor with authority to investigate political offences, without stipulating the need for judicial authorization of detentions or the right of detainees to contact the outside world and receive medical care.

- The Revolutionary Legitimacy and Revolutionary Programme Document of March 1990 regards the observations and directives of the " Leader of the Revolution" (President Qaddhafi) as binding, enforceable and not subject to review or discussion.

- The Promotion of Freedom Act No. 20 of 1991, which permits imposition of a death sentence on anyone whose continued existence would pose a threat to society or lead to its disintegration, stipulates that citizens have a right to exercise authority and self-determination solely through the people's congresses and committees.

- The so-called Purification from Nepotism, Bribery, Atheism and Narcotic Drugs Act No. 10 of 1994 prescribes the penalty of amputation of the hand not only for anyone who, by engaging in small or large scale economic activity without authorization, could be regarded as a thief but also for anyone convicted of corruption or embezzlement of public or private funds.

- Act No. 15 of July 1996, which regulates the holding of foreign currency, prescribes very severe penalties, including amputation of a hand or a leg, for anyone holding foreign currency illegally, any dealings in or circulation of dollars outside the framework of the Central Bank being regarded as high treason.

- The "Code of Honor" of 9 March 1997 prescribes collective punishment for "specific crimes". The principle of collective punishment is obviously a flagrant violation of the principle of the personal nature of punishment in international law, insofar as a town, a village or a local, tribal or family council which covers up for perpetrators of those offences is liable to the penalty of deprivation of services (water, electricity, gas, telephone, food supplies, etc.), prohibition of

participation in local councils, suspension of all development projects and discontinuance of State social services.

The adoption and the application of this legal system has led to violations of the right to life, liberty, security of person, ownership of property and a fair trial and has left no scope for freedom of opinion, thought, assembly and association. For years, the "people's revolutionary committees" have been holding sham trials of political opponents and there are also various forms of special, field, military and people's courts. The " Purification" and " Volcano" committees that have been established have exercised the power to detain businessmen, traders and shopkeepers on suspicion of corruption, trading in foreign goods or funding Islamic groups, as a result of which many of them have been forced to wind up their businesses. The committees that have been established to combat " Atheism" (Zandaqa) have engaged in arbitrary practices and the authorities have subjected opponents within the country and abroad, as well as their families and relatives, to harassment, pressure, threats and physical liquidation, in addition to the widespread resort to the demolition of houses as a form of reprisal.

Libya is indeed a party to the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political rights; Optional Protocol to the International Covenant on Civil and Political Rights, Convention against Torture and Other, Inhuman or Degrading Treatment or Punishment; Freedom of Association and Protection of the Right to Organize Convention; right to Organize and Collective bargaining Convention; Employment policy Convention and others.

The UN Human Rights Committee deplored the Human Rights situation in Libya (see latest concluding observations: CCPR/C/79/Add.101, 6 November 1998). It deplored in particular the introduction of cruel punishments such as flogging and amputation, the practice of arbitrary arrest and detention, the detention of persons sentenced after unfair trials and the length of pre-trial detention. It also deplored "the lack of information about certain identified people who are said to be held in incommunicado detention without trial for lengthy periods and of persons who oppose the Government and are said to have disappeared". It further deplored in the same vain that "certain restrictions imposed in Libya to the rights of opinion, the freedom of expression, the right of assembly and the right to freedom of association are not in conformity with articles 19, 21 and 22 of the Covenant". It concluded that "these restrictions unduly limit the rights to participate in the conduct of public affairs, including the opportunities to criticize and to oppose the Government" The Committee also showed concerns about "the lack of independence of the legal profession and doubts about the openness and fairness of trial procedures".

The FIDH and the LLHR believe that the international community should get out of the cycle of "deploration" and "concerns" to adopt a practical programme to assist the Libyan Government to reverse its policy from a systematic disregard of Human Rights to a policy that is in line with its international commitments and obligations. The FIDH and the LLHR therefore recommend that:

- The Commission designate a special Rapporteur on Libya;

- The government of Libya comply with the international human rights instruments to which it is a party and that is implement all the recommendations set forth by the Human Rights Committee in 1998 and the Committee against Torture in 1999;

- All prisoners of opinion and conscience be immediately released;

- Steps be immediately taken to vote a "Constitution" or "basic Law" that guarantees the independence of the judiciary that makes all Libyans, including the government, subject to the rule of law.